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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888

270 7590 05/10/2006

HOWSON AND HOWSON  
SUITE 210  
501 OFFICE CENTER DRIVE  
FT WASHINGTON, PA 19034

EXAMINER
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PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A. Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,12,15-21 and 23-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,12,15-21 and 23-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**  
**REPEATED REJECTIONS**

1. The 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 as being unpatentable over Kasai (U.S. Patent No. 4,927,677) in view of Branch (U.K. Patent No. 2295617) and Gibbons et al (U.S. Patent No. 4,888,222), of record on page 2 of the previous Action, is repeated.

**ANSWERS TO APPLICANT'S ARGUMENTS**

2. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 as being unpatentable over Kasai (U.S. Patent No. 4,927,677) in view of Branch (U.K. Patent No. 2295617) and Gibbons et al (U.S. Patent No. 4,888,222), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 3 of the remarks, that Kasai discloses that ethylene vinyl alcohol is an undesirable material for use as an oxygen barrier in a retort container.

However, Kasai does not use the term 'undesirable'; Kasai discloses that oxygen barrier materials are well known, and that a retort container is therefore functional when it has an ethylene vinyl alcohol barrier, but that polyvinylidene chloride does not lose as much of its oxygen barrier in retort; furthermore, ethylene vinyl alcohol is not the barrier layer of the rejection.

Applicant also argues, on page 4, that in contrast to retort containers, Gibbons et al disclose a paperboard container.

However, both containers are food containers, and a retort container is not claimed.

Applicant also argues, on page 4, Gibbons et al teach that ethylene vinyl alcohol and polyvinylidene chloride are different.

However, as stated on page 2 of the previous Action, Gibbons et al teach the interchangeable use of ethylene vinyl alcohol and polyvinylidene chloride as barrier materials.

Applicant also argues, on page 4, that Gibbons et al do not teach the interchangeability of ethylene vinyl alcohol and polyvinylidene chloride as barrier materials.

However, as stated above, the interchangeability of ethylene vinyl alcohol and polyvinylidene chloride as barrier materials is taught by Gibbons et al; furthermore, Gibbons et al is not used in the rejection for a teaching of interchangeability of ethylene vinyl alcohol and polyvinylidene chloride.

Applicant also argues, on page 5, that Kasai cannot be combined with Gibbons et al because Kasai discloses that ethylene vinyl alcohol has oxygen gas permeability of unacceptable levels.

However, Kasai does not use the term 'unacceptable'; as stated above, Kasai discloses that oxygen barrier materials are well known, and that a retort container is therefore functional when it has an ethylene vinyl alcohol barrier.

Applicant also argues, on page 5, that Kasai discloses a container that has vapor properties that are not lowered when the material undergoes a retort treatment, and that Gibbons would destroy the function of Kasai.

However, as stated above, ethylene vinyl alcohol is not the barrier layer of the rejection.

Applicant also argues, on page 6, that there is no suggestion that the polyvinylidene chloride of Kasai could be replaced with any material, and that polyvinylidene chloride is not interchangeable with nylon.

However, as stated on page 2 of the previous Action, Gibbons teaches the interchangeability of polyvinylidene chloride and nylon, therefore providing a suggestion that the polyvinylidene chloride of Kasai can be replaced.

Applicant also argues, on page 6, that Gibbons et al teach that polyvinylidene chloride should not be used by itself as an oxygen barrier.

However, Gibbons et al teach that when polyvinylidene chloride is used as a barrier layer, it is used interchangeably with nylon.

Applicant also argues on page 6 that Kasai and Gibbons et al are directed to different types of packages, and that the rejection is the result of hindsight.

However, as stated above, both containers are food containers; the rejection is therefore not the result of hindsight.

Applicant also argues, on page 7, that Kasai does not disclose the selection of the amount of talc depending on the desired impact resistance, and that there is no motivation to decrease the claimed amount of talc.

However, Kasai discloses the impact resistance of the blend, and therefore discloses an amount sufficient to obtain the desired thermal resistance; motivation is therefore provided to increase or decrease the amount of filler, as desired, in the absence of an unexpected result or critical advantage obtained from the claimed amount of filler.

Applicant also argues, on page 8, that the requirement of three references is an indication of hindsight.

However, it is unclear why the requirement of three references is an indication of hindsight.

Applicant also argues, on page 9, that Kasai discloses a non – filled layer, rather than a filled layer, having a thickness of 50 microns.

However, Kasai does not disclose that the layer is non – filled.

Applicant also argues, on page 10, that Kasai does not disclose a heat – sealable plastic film comprising a filled layer.

However, as stated on page 5 of the previous Action, Kasai discloses a heat – sealable plastic film comprising polypropylene, and therefore discloses a heat – sealable film comprising filled polypropylene.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson 4/28/06*

Marc A. Patterson, PhD.  
Primary Examiner  
Art Unit 1772